

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DARLERY FRANCO,

Plaintiff, : Civil Case No. 04-1318 (FSH)
: Civil Case No. 07-6039 (FSH)

v.

CONNECTICUT GENERAL LIFE
INSURANCE CO., et al.,

: **ORDER**

: Date: December 20, 2007

Defendants.

HOCHBERG, District Judge

This matter having come before the Court upon Defendant Connecticut General Life Insurance Co.'s ("CIGNA") Motion to Dismiss Plaintiffs' First Amended Complaint, and the Court having considered the arguments of the parties on the papers pursuant to Federal Rule of Civil Procedure 78; and

it appearing that the docket number of this case does not reflect the actual posture of the litigation and that, through no fault of the parties or the Court, the instant case is at the initial Fed. R. Civ. P. 12(b)(6) motion to dismiss stage; and

it appearing that this litigation's current posture is the result of numerous events, including:

- a stay on June 30, 2004, at which time all outstanding motions were terminated in anticipation of the impending transfer to the Panel on Multi-District Litigation in In Re Managed Care Litigation in the Southern District of Florida;

- a transfer to the Panel on Multi-District Litigation in In Re Managed Care Litigation in the Southern District of Florida from December 6, 2004 until May 17, 2006, during which time this case was a “tag-along” case with neither discovery nor substantive action occurring during this interval;
- on July 27, 2006, the litigation was functionally terminated by consent of the parties when the Millen Plaintiffs voluntarily dismissed their claims without prejudice and the remaining Plaintiff’s request to voluntarily withdraw her claims and file an amended complaint was granted, and Defendants were granted the right to voluntarily withdraw their motion to dismiss without prejudice to the right to refile upon the filing of a new complaint (See DKT#36);
- on June 15, 2007 Plaintiff filed the First Amended Complaint, which is the subject of the pending motion to dismiss; and

it appearing that during this period from 2004 through the present date, no discovery has in fact commenced because of the pendency of the above-referenced procedural events; and

it appearing that both parties have consented to refiling this case with a docket number that reflects the actual posture of the litigation (See Statement of Defendants Regarding Designation as Related Case and Reassignment (DKT#89) at 2-3; Plaintiffs’ Response (DKT#90) at 16.);

ACCORDINGLY it is on this 20th day of December, 2007

ORDERED that the action of the Court terminating Defendants’ motion to dismiss on July 27, 2006 and granting Plaintiffs’ leave to withdraw the complaint and to file an amended complaint shall be deemed nunc pro tunc the granting of a motion to dismiss without prejudice to

refiling an amended complaint while preserving the "relation back" doctrine to the original complaint; and it is further

ORDERED that Civil Docket No. 04-1318 is closed nunc pro tunc July 27, 2006 and the filing of the First Amended Complaint on June 15, 2007 is nunc pro tunc the initiation date of the instant case, which shall hereafter bear Civil Docket Number 07-6039; and all papers related to the First Amended Complaint shall be filed under the new case number Civil Docket No. 07-6039; and papers shall not be filed under Civil Docket No. 04-1318, nor shall they bear both docket numbers; and it is further

ORDERED that Defendants' Motion to Dismiss (DKT#60) shall be terminated without prejudice to the right to refile a new motion upon completion of the intensive discovery period on standing and jurisdictional issues as ordered by this Court on December 12, 2007 (DKT#94); and it is further

ORDERED that because of the aforementioned delays in this case, the Court hereby orders a shortened briefing schedule for any new motion to dismiss, which shall be as follows: Defendant's new motion to dismiss shall be filed no later than February 20, 2008; Plaintiff's opposition shall be filed no later than March 11, 2008; and any reply shall be filed no later than March 17, 2008; and it is further

ORDERED that no party shall request an adjournment of these dates for any reason, and if there are any impediments to completing discovery on the limited factual issues presented by the motion to dismiss, the parties shall submit a letter using the joint letter protocol to Judge Shwartz no later than **January 30, 2008**; and it is further

ORDERED that, by consent of the parties, no new claims or defenses may be raised based on the new case filing date and that all claims and defenses available to the parties based on the original filing date shall be preserved; and it is further

ORDERED that it shall be indicated on the new docket sheet that Civil Case No. 04-1318 is the predecessor of the instant case.

/s/ Faith S. Hochberg

HON. FAITH S. HOCHBERG, U.S.D.J.